

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202105963	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/04/2021 2:50 PM, Monday, 10/04/2021 3:20 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 4/4/2023	Precinct: 120		
Date/Time CV Reported Tue, 10/05/2021 5:58 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 10/05/2021 5:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Lee Wittek	03714	935978	INT CIS
2. LT Paul Montana	00000	924214	PBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Justin Meehan	25009	937084	122 PCT
2. PO Michael Dagostino	21377	962342	122 PCT
3. PO Emmanuel Keppel	09286	943434	122 PCT
4. DTS Victor Baniqued	06412	936169	122 PCT
5. PO Taylor Fortunato	04318	964518	120 PCT
6. PO Samantha Oconnell	14731	968044	120 PCT
7. PO Mohammad Hoque	13261	954944	120 PCT
8. LT Matthew Harrison	00000	930323	120 PCT
9. PO Michael Meyerson	04186	956931	120 PCT
10. SGT George Arabella	00091	929644	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A . DT3 Lee Wittek	Force: Detective Lee Wittek used physical force against § 87(2)(b)	§ 87(2)(b)
B . LT Paul Montana	Abuse: Lieutenant Paul Montana threatened to arrest § 87(2)(b)	§ 87(2)(b)
C . DT3 Lee Wittek	Abuse: Detective Lee Wittek stopped § 87(2)(b)	§ 87(2)(b)
D . DT3 Lee Wittek	Abuse: Detective Lee Wittek questioned § 87(2)(b)	§ 87(2)(b)
E . DT3 Lee Wittek	Abuse: Detective Lee Wittek stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
F . DT3 Lee Wittek	Abuse: Detective Lee Wittek searched § 87(2)(b)	§ 87(2)(b)
G . DT3 Lee Wittek	Abuse: Detective Lee Wittek frisked § 87(2)(b)	§ 87(2)(b)
H . DT3 Lee Wittek	Abuse: Detective Lee Wittek searched § 87(2)(b)	§ 87(2)(b)
I . DT3 Lee Wittek	Abuse: Detective Lee Wittek failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)

Case Summary

On October 5, 2021, § 87(2)(b) filed the following complaint on behalf of herself and her daughter, § 87(2)(b) with the CCRB online.

On October 4, 2021, at approximately 2:50 p.m., Lieutenant Paul Montana, of Patrol Borough Staten Island, and Det. Lee Wittek, of the Criminal Intelligence Section, responded to § 87(2)(b) in Staten Island on suspicion of a stolen vehicle. Ten precinct officers also responded: PO Taylor Fortunato, PO Samantha Oconnell, PO Mohammad Hoque, PO Matthew Harrison, and PO Michael Meyerson, of the 120 Precinct, and PO Justin Meehan, PO Michael Dagostino, PO Emmanuel Keppel, PO Victor Baniqued, and PO George Arabella, all of the 122 Precinct.

§ 87(2)(b) was arrested for possession of stolen license plates. § 87(2)(b) alleged that Det. Wittek forcibly placed her hands behind her back in an aggressive manner during her arrest (**Allegation A: Force – Physical force**, § 87(2)(g)). While this was occurring, Lieutenant Montana spoke with § 87(2)(b) and said to her, “if you live there, you’ll be coming with me” (**Allegation B: Abuse of Authority – Threat of arrest**, § 87(2)(g)). § 87(2)(b) was taken to the 120th Precinct stationhouse. Det. Wittek then stopped § 87(2)(b) (**Allegation C: Abuse of Authority – Stop**, § 87(2)(g)). § 87(2)(b) initially stated that she did not have ID on her and Det. Wittek asked, “You’re driving a car without a driver’s license?” (**Allegation D: Abuse of Authority – Question**, § 87(2)(g)).

§ 87(2)(b) entered § 87(2)(b) and officers remained on scene to continue their investigation into the stolen vehicle. At approximately 3:20 p.m., § 87(2)(b) exited § 87(2)(b) and got back in her car. Det. Wittek approached her a second time and, as she was driving away, stopped her and told her to get out of her vehicle (**Allegation E: Abuse of Authority – Vehicle stop**, § 87(2)(g)). Det. Wittek grabbed § 87(2)(b) keys and inspected them without § 87(2)(b) consent (**Allegation F: Abuse of Authority – Search**, § 87(2)(g)). Det. Wittek then had § 87(2)(b) step to the back of her vehicle, where he grabbed the pockets to her hoodie (**Allegation G: Abuse of Authority – Frisk**, § 87(2)(g)) and lifted her hoodie up (**Allegation H: Abuse of Authority – Search**, § 87(2)(g)). Det. Wittek then told § 87(2)(b) she was free to go. Det. Wittek did not provide § 87(2)(b) a business card (**Allegation I: Abuse of Authority – Failure to provide business card**, § 87(2)(g)).

§ 87(2)(b) was not arrested nor issued a summons. § 87(2)(b) was arrested for possession of stolen property in the fifth degree (**BR 03**).

There is BWC footage from Det. Wittek, Lieutenant Montana, PO Meehan, PO Dagostino, PO Keppel, PO Baniqued, PO Fortunato, PO Oconnell, PO Hoque, PO Harrison, PO Meyerson, and PO Arabella (**BRs 06 – 12, BR 25**). Relevant portions will be discussed below.

Findings and Recommendations

Allegation (A) Force: Det. Lee Wittek used physical force against § 87(2)(b)

It was undisputed that Det. Wittek and Lieutenant Montana initially responded to § 87(2)(b) a multi-unit home, to investigate a BMW that had been reported stolen by a third party not involved in this investigation. The BMW had GPS location services which confirmed the vehicle’s location to be § 87(2)(b). In the § 87(2)(b) driveway, Det. Wittek and Lieutenant Montana observed a second vehicle (later identified as § 87(2)(b)) parked and blocking the stolen BMW in the driveway. Det. Wittek and Lieutenant Montana ran the license plates of § 87(2)(b) vehicle and found that they were reported stolen. Det. Wittek and Lieutenant Montana consistently stated that they called for additional officers to the scene and waited for someone to enter either the BMW or § 87(2)(b) vehicle (**BRs 04, 05**). When § 87(2)(b) later entered the vehicle with the stolen plates, she was arrested for possession of stolen property. The confirmation of the BMW being reported stolen, and the identification of § 87(2)(b) stolen license plates were both properly documented by Det. Wittek in his DD5s (**BR 13**).

§ 87(2)(b) (**BR 31**) stated that after she was handcuffed, Det. Wittek “manhandled” her by

aggressively lifting her arms up behind her back causing pain. She was upset when Det. Wittek placed her arms behind her back and began resisting in response to his behavior.

§ 87(2)(b) (BRs 01-02) did not allege any force during § 87(2)(b) arrest.

Det. Wittek (BR 04) stated that § 87(2)(b) tried to put her hands in her pockets once she was placed in handcuffs and ignored multiple verbal commands to stop, so he lifted her arms up to prevent her from placing her hands in her pockets. § 87(2)(b) had not yet been searched at that point, so he did not know if she had a weapon on her. Det. Wittek soon afterward handed § 87(2)(b) off to two female officers to have her searched incident to arrest.

Det. Wittek's first BWC (BR 06) is consistent with his statement. At 7:30, Det. Wittek walks § 87(2)(b) to a marked police vehicle. § 87(2)(b) calls out to § 87(2)(b) to get her weed from her bag, which is strapped around her body. Det. Wittek tells § 87(2)(b) that nobody is taking her weed and that everything on her person must come with her to the stationhouse. § 87(2)(b) walks over and attempts to reach into § 87(2)(b) bag, but Det. Wittek tells her no. Det. Wittek and § 87(2)(b) speak at the same time, with § 87(2)(b) asking again for her mother to take her stuff, and Det. Wittek telling her to keep her hands out of her pockets. Det. Wittek holds § 87(2)(b) by either her arms or her handcuffs. § 87(2)(b) appears to pull her upper body away from Det. Wittek as he holds her arm. Det. Wittek says, "Stop. Stop. Stop. Stop reaching for your pocketbook." § 87(2)(b) asks if she can give her bag to § 87(2)(b) and Det. Wittek says that she cannot. § 87(2)(b) and § 87(2)(b) argue with Det. Wittek about taking § 87(2)(b) belongings. Det. Wittek tells § 87(2)(b) to stop reaching for her pocketbook again. § 87(2)(b) asks three times in a row if she can take § 87(2)(b) belongings and each time Det. Wittek says she cannot. At 8:28, § 87(2)(b) says that Det. Wittek is "intentionally trying to hurt" her. Det. Wittek then hands § 87(2)(b) off to PO O'Connell.

The same allegation is visible at a clearer angle in PO O'Connell's BWC video (BR 07). Beginning at 6:15, § 87(2)(b) tries to grab her bag. Det. Wittek holds § 87(2)(b) handcuffs and pulls her hands back approximately six inches. He does not appear to pull her hands upward. Det. Wittek hands § 87(2)(b) off to PO O'Connell less than twenty seconds later.

Patrol Guide procedure 221-01 (BR 14) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

It was undisputed that § 87(2)(b) after she was arrested and handcuffed, resisted Det. Wittek by pulling her arms away from him. She is also captured on BWC trying to reach into her bag and refusing to comply with multiple verbal commands to stop. Det. Wittek had general safety concerns about her entering her pockets and bag because she had not yet been searched. § 87(2)(g)

Allegation (B) Abuse of Authority: Lieutenant Paul Montana threatened to arrest § 87(2)(b)

This allegation derives from BWC video.

§ 87(2)(b) (BRs 01-02) did not mention any threat of arrest in either of her statements to the CCRB.

In Lieutenant Montana's first BWC video (BR 08), at 2:00, Lieutenant Montana walks up the driveway of § 87(2)(b) and looks inside the BMW through the window. § 87(2)(b) says, "That's private property you coming on!" At 2:20, Lieutenant Montana walks over to § 87(2)(b) and asks her if she owns this property. § 87(2)(b) replies, "What is it for?" Lieutenant Montana says, "Do you own this property? Yes, or no?" § 87(2)(b) says, "I don't have to disclose that." At 2:30, while § 87(2)(b) is interacting with Det. Wittek, Lieutenant Montana explains to § 87(2)(b) that the BMW he was inspecting is stolen and that they are going to seize it. He then says to § 87(2)(b) "So if you live there § 87(2)(b) you'll be coming with me."

In Det. Wittek's first BWC (BR 06), at 9:37, § 87(2)(b) says, "And your sergeant used the force of threat - uh, words of threat against me. Said he was gonna detain - uh, he was gonna arrest me 'cause, if I lived there, there's two stolen vehicles, that he was gonna arrest me. So those were his words."

Lieutenant Montana (BR 05) said that he did not threaten to arrest § 87(2)(b) only that he was looking for someone with any information regarding the stolen BMW, and that § 87(2)(b) might want to come down to the stationhouse as a witness to their investigation. He said this to § 87(2)(b) because he assumed that she wanted to go down to the stationhouse because her daughter was just arrested. Lieutenant Montana said that there was no reason § 87(2)(b) could have been arrested for anything at that point.

Patrol Guide procedure 208-01 (BR 15) outlines when an officer may make an arrest, including (1) with a warrant, and (2) for an offense committed in an officer's presence, (3) for a crime (within presence or not) and reasonable cause exists that they committed the crime, and (4) for a petty offense in his presence (violations and traffic infractions).

It was undisputed that § 87(2)(b) was not suspected of any criminality and that there was nothing for which she could have been arrested. Lieutenant Montana denied that he threatened to arrest § 87(2)(b) and explained that he told her, "So if you live there, you'll be coming with me," because he wanted information regarding his investigation into the stolen car and had assumed that § 87(2)(b) would want to go to the stationhouse because § 87(2)(b) had been arrested. However, Lieutenant Montana made this comment after § 87(2)(b) declined to confirm whether she lived at that location and as part of a larger conversation indicating that he was going to seize the stolen car. Lieutenant Montana did not ever say anything to § 87(2)(b) about going to the stationhouse because § 87(2)(b) had been arrested. Additionally, § 87(2)(b) is captured on BWC saying that Lieutenant Montana threatened to arrest her if she lived at that location. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (C) Abuse of Authority: Detective Lee Wittek stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Detective Lee Wittek questioned § 87(2)(b)

These allegations derive from BWC footage.

In Det. Wittek's first BWC video (BR 06), at 12:15, Det. Wittek approaches § 87(2)(b) and asks her if she has identification. § 87(2)(b) asks why, and Det. Wittek says he wants to document that she was on scene and that she "isn't in any kind of trouble." § 87(2)(b) states she does not want to provide her ID because she does not want her name "run through the system." When § 87(2)(b) tells Det. Wittek, "I know my rights. I don't have to give you my ID because I'm not...a suspect of a crime or the initial thing. I'm not!" Det. Wittek then responds to § 87(2)(b) "Come with me for a second, then. Come with me for a second," and walks her over to her vehicle. At 13:07, § 87(2)(b) says that she does not have her ID on her. Det. Wittek says, "You're driving a car without a driver's license?" § 87(2)(b) says that she has her ID but that she is not going to give

it to him. § 87(2)(b) verbally provides Det. Wittek with her name, date of birth, and address and shows him a photograph of her license on her phone, after which Det. Wittek walks away.

Det. Wittek (BR 04) confirmed that he stopped § 87(2)(b) because he needed § 87(2)(b) name for the DD5s he would prepare regarding § 87(2)(b) arrest. However, he explained that § 87(2)(b) was not required to provide her name in this situation and that she was free to leave.

Although Det. Wittek stated that § 87(2)(b) was free to leave and that she was not required to provide him with her ID, the investigation determined that his statement telling her to “come with me” after she refused to provide it would indicate to a reasonable person that they were not, in fact, free to leave the location. As such, a corresponding stop allegation has been pleaded against Det. Wittek.

Det. Wittek prepared stop report # § 87(2)(b) (BR 16) but did not mention this portion of the incident. The report is regarding a second stop discussed in **Allegation E**.

According to People v. De Bour, 40 N.Y.2d 210 (BR 18) officers may stop a person if there exists reasonable suspicion that the person has committed, is committing, or is about to commit a crime. Officers may also ask an accusatory question if they have founded suspicion that criminal activity is present.

NYC Vehicle and Traffic Law § 507.2 (BR 28) states that failure by a licensee to exhibit a license valid for operation to any magistrate, motor vehicle license examiner, motor vehicle investigator, peace officer, acting pursuant to his special duties, or police officer shall be presumptive evidence that he is not duly licensed. Section 509.2.2 states that whenever a license is required to operate a motor vehicle, no person shall operate a motor vehicle unless he is the holder of a class of license which is valid for the operation of such vehicle (BR 30).

It was undisputed that Det. Wittek possessed no reasonable suspicion that § 87(2)(b) had committed, was committing, or was about to commit a crime when he stopped her. Furthermore, he confirmed in his interview that the reason he stopped § 87(2)(b) was only to obtain her ID for documentary purposes and that she was not required to provide him with that information. § 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Det. Lee Wittek stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (F) Abuse of Authority: Det. Lee Wittek searched § 87(2)(b)

§ 87(2)(b) (BR 02) stated that after § 87(2)(b) was taken to the stationhouse, she went inside § 87(2)(b) and exited a few minutes later to find that officers were still at the location. She entered her vehicle and started to drive away, but Det. Wittek approached her vehicle and asked her to get out, which she did. Det. Wittek then demanded that she give him her keys. She asked why, but Det. Wittek grabbed her keys from her hand, inspected them briefly, and returned them.

Det. Wittek (BR 04) stated that just after § 87(2)(b) exited § 87(2)(b) an officer from the Evidence Collection Team (ECT) who was inspecting the BMW, stepped out of the BMW with a strange look on his face and informed him that some “electrical components” of the BMW turned on when § 87(2)(b) walked past. The ECT officer told Det. Wittek that the BMW’s key fob had to be close by in order for the vehicle to react that way. The only person that had walked past the BMW had been § 87(2)(b). As § 87(2)(b) had been the only person who was not a police officer to walk by, and because her exiting the house corresponded to the activation of the

electronics in the car, Det. Wittek decided to approach her to further investigate her involvement in the stolen vehicle. Det. Wittek approached § 87(2)(b) who was about to pull away in her vehicle. § 87(2)(b) initially refused to provide her car keys when he first asked, but she allowed him to look at them after he explained to her what the officer had told him about the key fob. He did not observe a key fob on § 87(2)(b) keychain prior to inspecting her keys. Det. Wittek looked at the keys and determined that there was no key fob, so he returned them to § 87(2)(b).

Lieutenant Montana (**BR 05**) stated that he did not interact with § 87(2)(b) again after speaking with her at her car and only learned of the key fob situation from Det. Wittek after Det. Wittek had searched the keys for the fob.

In Det. Wittek's second BWC video (**BR 09**), before the audio begins at 1:00, at 00:34, Det. Wittek appears to speak briefly with an ECT officer inspecting the BMW. Det. Wittek then walks over to § 87(2)(b) vehicle, which is pulling away. He sticks out his hand to stop her. Their initial conversation is not heard. When the audio begins at 1:00, § 87(2)(b) is standing outside of her vehicle. Det. Wittek says, "Let me see your keys for a second. Let me see your keys. Let me see your car keys." § 87(2)(b) does not hand over her keys but replies, "I'm asking you, what for?" Det. Wittek says that they are conducting an investigation and that he needs to see her car keys. He does not say anything to her about the key fob. § 87(2)(b) asks if he has a warrant and says that he cannot search her. Det. Wittek says, "Let me see your keys." § 87(2)(b) says, "Okay, look. I'm holding my keys. You can see them." After a few seconds, Det. Wittek tells § 87(2)(b) to step to the back of her car.

In Lieutenant Montana's second BWC (**BR 25**), beginning at 1:00, Det. Wittek takes § 87(2)(b) keys out of her hands and looks at them. At 1:19, Det. Wittek walks over to Lieutenant Montana and says, "The car just turned on. The BMW. The key fob is relatively close, and it turned on as she passed it coming out of the house." Lieutenant Montana says, "It could be her. It could be someone inside the house, though. I don't think she has it right now." At 2:00, Lieutenant Montana speaks with an ECT officer. The ECT officer says that when § 87(2)(b) exited § 87(2)(b) the GPS and all the interior lights went on. Lieutenant Montana states, "Yeah, that could be anyone in the house right now."

Det. Wittek prepared a stop report for this incident, #§ 87(2)(b) which is consistent with his statement (**BR 16**).

Det. Wittek prepared DD5s for this incident (**BR 13**) which document that the BMW was tracked to § 87(2)(b) via Onstar GPS location services.

Per People v. Clark, 216 A.D.2d 919 (**BR 26**), a police officer is allowed to rely upon the information provided by a fellow officer and need not have personal knowledge or information.

In People v. Brown, 96 N.Y.2d 80 (**BR 27**), the court defined the plain view doctrine, in that officers may properly seize an item in plain view without a warrant if: (i) they are lawfully in a position to observe the item; (ii) they have lawful access to the item itself when they seize it; and (iii) the incriminating character of the item is immediately apparent.

According to People v. De Bour, 40 N.Y.2d 210 (**BR 18**) officers may stop a person if there exists reasonable suspicion that the person has committed, is committing, or is about to commit a crime.

In People v. Mosquito, 197 A.D.3d 504 (**BR 17**), the court defined the following: "A truly cursory inspection—one that involves merely looking at what is already exposed to view, without disturbing it—is not a search and therefore does not even require reasonable suspicion. By contrast, the plain view doctrine is not applicable where the object must be moved or manipulated before its illegality can be determined. The movement or manipulation of an object from its original state in a manner that goes beyond the objectives of the original search constitutes an independent search or seizure within the meaning of the State and Federal Constitutions. Such a search or seizure may not be upheld without proof that the officer who moved or manipulated the object had probable cause to believe that the object was evidence or contraband at the time that it was moved or manipulated." The court also ruled that "The plain view doctrine may not be used to extend a general exploratory

search from one object to another until something incriminating at last emerges."

It was undisputed that the BMW was stolen and that an officer processing the vehicle informed Det. Wittek that when § 87(2)(b) walked by, electronic devices inside the vehicle turned on, indicating that the key fob must be nearby. § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

While it was undisputed that a fob activated something in the car, there was nothing to connect § 87(2)(b) to that fob other than her proximity to the car when things turned on. Det. Wittek did not see a fob on her key chain and had confirmed that the sole reason he wanted to inspect § 87(2)(b) keys was to determine whether there was a fob. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Abuse of Authority: Detective Lee Wittek frisked § 87(2)(b)

Allegation (H) Abuse of Authority: Detective Lee Wittek searched § 87(2)(b)

Allegation (I) Abuse of Authority: Detective Lee Wittek failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated (BR 02) that after Det. Wittek inspected her car keys and returned them to her, he brought her to the rear of her vehicle and told her to place her hands on the trunk. Det. Wittek then lifted § 87(2)(b) sweatshirt up, exposing her stomach and lower back to Det. Wittek and the five other male officers standing around her. § 87(2)(b) believed that Det. Wittek lifted her sweatshirt up enough to expose about two to three inches of skin. She felt embarrassed by the action but confirmed that none of her underwear was exposed. She then got back in her car and left to get § 87(2)(b). She did not receive a business card.

PO Dagostino's second BWC is the most comprehensive of these allegations (BR 10). At 2:24, Det. Wittek asks § 87(2)(b) if she has anything in her pockets, and § 87(2)(b) replies, "nothing." She is wearing jeans and a black zip up hoodie with two front pockets. Det. Wittek grabs each pocket, squeezes them, and then lifts § 87(2)(b) hoodie up about five inches by the pockets. Her lower midriff is exposed for approximately one second. He then releases the hoodie.

Det. Wittek (BR 04) initially stated that he had no independent recollection of frisking § 87(2)(b) but amended his statement upon reviewing BWC footage. He stated that he frisked § 87(2)(b) for safety purposes because she was under investigation for "potentially grand larceny." He did not articulate that he suspected § 87(2)(b) to be carrying a weapon nor did he articulate that he made any observations of § 87(2)(b) person that led him to believe that she was carrying a weapon. He added that there was no reason § 87(2)(b) could have been arrested. Regarding lifting § 87(2)(b) hoodie up, Det. Wittek stated he did so to see her pockets. Det. Wittek stated that he at no point intended to embarrass § 87(2)(b) by intentionally lifting up her hoodie. Det. Wittek did not provide § 87(2)(b) with a business card.

§ 87(2)(g)

§ 87(2)(g)

According to People v. DeBour 40 N.Y.2d 210, 215, (BR 18) officers are permitted to frisk an individual when they have reasonable suspicion that the individual has a weapon.

According to People v. Sanchez, 38 N.Y.2d 72, an officer can conduct a limited search of an area if they feel a hard object and can provide an articulable reason to believe that said object

poses a dangerous threat (**BR 29**).

Administrative Guide 304-11 (BR 19) states that officers must “Offer pre-printed RIGHT TO KNOW BUSINESS CARD upon conclusion of law enforcement activities, except in cases when a summons is issued or an arrest is made, or exigent circumstances are present,” including a frisk or search of a person.

Det. Wittek had stated he stopped § 87(2)(b) because he suspected that she might be carrying a key fob. He then stated that he frisked her for safety reasons. However, Det. Wittek did not articulate that he made any observations that suggested § 87(2)(b) was carrying a weapon prior to frisking her. § 87(2)(g)

Furthermore, BWC footage shows that after frisking § 87(2)(b) pockets, Det. Wittek then lifted § 87(2)(b) jacket and exposed her midsection. § 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 20**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 21**).
- Lieutenant Montana has been a member of service for 23 years and this is the first CCRB complaint in which he is listed as a subject.
- Det. Wittek has been a member of service for 18 years and has been a subject of nine CCRB complaints and 21 allegations, one of which was substantiated.
 - 201203464 involved an allegation of force, which was exonerated; and allegation of discourtesy, which was unsubstantiated; and a vehicle search allegation, which was substantiated. The Board recommended and the NYPD imposed instructions.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- On April 4, 2022, a FOIL request for any Notice of Claim regarding this complaint was returned from the Office of the Comptroller with negative results (**BR 22**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 10

Investigator:	Carter Garfield Signature	Inv. Garfield Print Title & Name	1/23/2023 Date
Squad Leader:	Maura R. Roche Signature	IM Maura R. Roche Print Title & Name	01/24/2023 Date

Reviewer: _____
Signature Print Title & Name Date